

18-R-12

A RESOLUTION

Authorizing the City Manager to Negotiate a TIF Construction Grant Agreement with Ward Eight, LLC for Improvements to City Property located at 629 Howard Street

WHEREAS, the City of Evanston, Cook County, Illinois (the "City"), is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970; and

WHEREAS, pursuant to Ordinances 8-O-92, 09-O-92, and 10-O-92, adopted April 27, 1992 in connection with the Howard Ridge Tax Increment Redevelopment Project Area (the "Redevelopment Project Area"), the City Council of the City of Evanston (the "City") adopted the Howard Ridge Tax Increment Area Redevelopment Plan and related redevelopment projects, designated the Redevelopment Project Area, and authorized tax increment finance pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, as supplemented and amended, including the predecessor Act thereof (the "TIF Act"); and

WHEREAS, the City of Evanston owns certain real property known as 629-631 Howard Street, Evanston, Illinois (the "Property"), which is improved with a three-story building containing one (1) commercial unit on the bottom floor and two residential units on the top two floors; and

WHEREAS, The Property is within the Redevelopment Project Area and the City seeks to have the Property renovated partly with TIF funds; and

WHEREAS, Ward Eight, LLC would like to lease the commercial space on the first floor of the Property and renovate said commercial space with available TIF funds,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: The City Manager is hereby authorized and directed to negotiate a TIF Construction Grant agreement ("Agreement") between the City and Ward Eight, LLC, an Illinois limited liability company, attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement as he may determine to be in the best interests of the City.

SECTION 3: This Resolution 18-R-12 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: February 27, 2012

EXHIBIT "A"

TIF CONSTRUCTION GRANT AGREEMENT

THIS TIF CONSTRUCTION GRANT AGREEMENT (the "Agreement") is entered into on this 27th day of March, 2012 ("Effective Date"), by and between the City of Evanston, an Illinois home rule municipality, ("City"), and Ward Eight, LLC, an Illinois limited liability company ("Ward Eight"), regarding the renovation and occupation of City property located at 629 Howard Street, Evanston, Illinois, legally described in Exhibit "A", which is attached hereto and incorporated herein by reference ("Property").

RECITALS

WHEREAS, the City desires to foster local businesses and jobs as part of its economic revitalization efforts throughout Evanston and in accord with the TIF Guidelines, as defined herein; and

WHEREAS, the City Property is improved with a three-story building containing one (1) commercial unit on the bottom floor and two residential units on the top two floors and the City seeks to renovate the Property with TIF grant funds; and

~~WHEREAS, the City has authorized Economic Development Division Staff to manage and administer this Agreement on behalf of the City including, without limitation, authorizing the City Manager to execute this Agreement with Ward Eight, thereby establishing the terms, conditions, and requirements for participation in this Agreement in accordance with TIF Guidelines; and~~

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and the mutual obligations of the parties as herein expressed, the City and Ward Eight agree as follows:

AGREEMENT

I. DEFINITIONS

The following terms shall have the following meanings whenever used in this Agreement, except where the context clearly indicates otherwise. Any ambiguity as to the intended meaning or scope of the terms set forth below will be resolved solely by the City through its designated representative.

- a. "Completion Date" means the date that the contractor has finished the Project pursuant to the plans approved by City Council, the City Manager or his/her designee, and to the satisfaction of Ward Eight, as evidenced by final payment to the contractor.

- b. **"Director"** means the City's Director of Community & Economic Development, who is responsible for managing and administering this Agreement on behalf of the City.
- c. **"Grant"** means the total amount of the City's grant of TIF monies to Ward Eight for purposes of funding TIF eligible activities of the Project, which shall not exceed \$100,000.00 and shall only be for approved improvements (One Hundred and no/100 Dollars), the amount approved by City Council.
- d. **"Project"** means the improvements on the Property as proposed by Ward Eight and approved by the City Council. Specifically, Ward Eight desires to renovate the Property to make it suitable for use as a cocktail/wine bar establishment and use TIF funds for said renovation.
- e. **"TIF Eligible Activities"** means activities determined to be eligible for payment from the City's TIF fund under the guidelines of the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 *et seq.*, as amended.
- f. **"TIF Guidelines"** means the regulations found in the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 *et seq.*, as amended. All terms not defined herein shall have the meanings set forth in the TIF Guidelines.
- g. **"Total Allowable Expenses"** means the actual costs incurred, paid for, and documented by Ward Eight and approved by the Director or his/her designee for the proper performance of the improvement work required by the plans and specifications and/or architectural/design renderings for the Project. Such allowable expenses must be TIF Eligible Activities.
- h. **"Total Project Expenditure"** means the total actual Project costs incurred by and paid for by the City, up to the amount of the Grant, and then payments made by Ward Eight after the amount of the Grant has been spent, which includes all costs of construction, materials, & supplies.

II. TERMS OF GRANT

- a. City shall disburse funds in the principal amount not to exceed \$100,000.00 (One Hundred Thousand and no/100 Dollars) (the "Grant Amount") from the City's Howard Ridge TIF Fund for improvements within the establishment that are approved for funding for the Project.
- b. The Grant by the City pursuant to this Agreement constitutes a 1-year grant to Ward Eight, until the tenant improvements for the Project are fully completed as described herein. If the Total Project Expenditures are greater than \$100,000.00, Ward Eight shall be solely responsible for any payments to the contractor or subcontractors above the Grant fund amount. If any project costs are determined to not be TIF Eligible Activities, Ward Eight must submit payment at

its own expense and Grant funds may not be used and Ward Eight shall receive no reimbursement from the City for non-TIF Eligible Activities.

- c. The City shall be invoiced directly by the contractors and subcontractors for payment. The Director or his designee shall review the invoices to ensure that the invoice charges are TIF Eligible Activities prior to payment.

III. WARD EIGHT'S RESPONSIBILITIES

- a. Ward Eight shall provide a list of all construction activities to the City prior to commencement of work to verify that the project costs are TIF Eligible Activities. Of those activities it will be determined which are eligible expenses for payment by the City and are TIF-eligible activities.
- b. Ward Eight shall comply with all terms and conditions of this Agreement and all applicable all requirements of Federal, Illinois and City of Evanston law.
- c. Ward Eight shall ensure that all work done on the Project and paid for with Grant funds are TIF Eligible Activities. The City will separately evaluate whether the project costs are TIF Eligible Activities.
- d. Ward Eight shall obtain and submit all required certificates of insurance, as set forth herein, to the City Manager or his/her designee upon execution of this Agreement and prior to City's execution.
- e. Ward Eight shall be responsible for hiring licensed contractors to complete the Project. The Director or his/her designee may require submission of proof of the State License issued to the selected contractors.
- f. Ward Eight shall be responsible for contacting the Director or his/her designee to arrange for obtaining all City and other approvals and/or permits required for construction and completion of the Project.
- g. Ward Eight shall be fully responsible for managing, monitoring, and scheduling the construction of the Project, for ensuring compliance with the payment of prevailing wages, if applicable, and for ensuring that all improvements are completed properly and in conformance with the approved project.
- h. Ward Eight shall make a good faith effort to use Evanston-based businesses as frequently as is financially feasible when purchasing supplies and/or hiring subcontractors and administrative services providers for the Project. Ward Eight shall obtain three (3) estimates for the scope of work for the Tenant Improvements and one (1) estimate must be obtained from an Evanston-based contractor.

- i. Upon completion of the Project, Ward Eight shall notify the Director and request inspection of the Project by the Director or his/her designee(s).
- j. Ward Eight shall complete the Project no later than six (6) months after receiving any building permit related to the Project.
- k. After completion of the Project, Ward Eight shall submit to the Director or his/her designee a report that includes the following:
 - i. Cover letter indicating the Project is completed and the Total Cost Expenditures for the Project;
 - ii. All contractor invoices detailing the specific tasks completed in accordance with approved Project;
 - iii. Unconditional lien releases; and
 - iv. Any additional material requested by the Director or his/her designee.
- l. Ward Eight shall maintain the Property in compliance with all applicable provisions of the Evanston City Code of 1979, as amended.
- m. Ward Eight shall not be more than one hundred twenty (120) days in arrears with regards to any City utility and/or service bills.

IV. THE CITY'S RESPONSIBILITIES

- a. City shall use up to \$100,000.00 (One Hundred Thousand and no/100 Dollars) (the "**Grant Amount**") from the City's Howard Ridge TIF Fund for the Project.
- b. The Director or his/her designee shall review Ward Eight's contractors' and subcontractors' sworn statements and accompanying documents, and, if said documents meet all terms, conditions, and obligations under this Agreement and the TIF Guidelines for Eligible Project Costs, the Director or his/her designee shall, in the ordinary course of business, submit payment to contractors and subcontractors.
- c. Within a reasonable time after Ward Eight notifies City of the completion of the Project, the Director or his/her designee shall inspect the improvements to ensure they were completed in accordance with approved Project and its guidelines.

V. TIME OF PERFORMANCE

The Ward Eight shall complete the Project no later than six (6) months after receiving any building permit related to the Project. Failure to complete the Project within six (6)

months will result in Ward Eight's breach of this Agreement. Requests for additional time and extensions in Project completion time will be granted, but only if submitted in writing prior to the expiration of the Agreement.

VI. AMOUNT OF GRANT

The total amount of the Grant to be made by the City, pursuant to the terms and conditions of this Agreement, shall not exceed \$100,000.00 (One Hundred and no/100 Dollars) as approved by City Council as stated above.

VII. INSURANCE

- a. During the entire period in which work on the Project is performed, the Ward Eight shall obtain and maintain in full force and effect during said period the following insurance policies: (i) Comprehensive General Liability Insurance in a general aggregate amount of not less than \$1,000,000, \$1,000,000 Products and Completed Operations Aggregate, and \$1,000,000 for each occurrence.
- b. All insurance policies shall name the City of Evanston, and their respective elected officials, officers, employees, agents, and representatives as additional insureds.
- c. All deductibles on any policy shall be the responsibility of the primary holder of such policy and shall not be the responsibility of the City.
- d. Ward Eight shall provide evidence of required insurance to the Director before execution of this Agreement.

VIII. OBLIGATION TO REFRAIN FROM DISCRIMINATION

- a. Ward Eight covenants and agrees for itself, its successors and its assigns to the Property, or any part thereof, that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, or age or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- b. That, if it hires additional employees in order to perform this contract, or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- c. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without

discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.

IX. NO AGENCY CREATED

The Ward Eight and any contractor, supplier, vendor or any third party hired by Ward Eight to complete the Project are not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Ward Eight concerning the details of the obligations under this Agreement, or to exercise any control over such obligations, shall mean only that the Ward Eight shall follow the direction of the City concerning the end results of the obligations.

X. OWNERSHIP OF DOCUMENTS

All documents prepared and submitted to the City pursuant to this Agreement (including any duplicate copies) shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights thereto.

XI. INDEMNIFICATION AND HOLD HARMLESS

To the maximum extent permitted by law, the Ward Eight agrees to and shall defend, indemnify and hold harmless the City, and its respective officers, officials, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including expert witness fees, reasonable attorneys' fees, and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or property resulting or arising from or in any way connected with the following, provided Ward Eight shall not be responsible for (and such indemnity shall not apply to) any negligence or willful misconduct of the City, or their respective officers, officials, active employees, contractors or agents:

- a. The development, construction, marketing, use or operation of the Property by the Ward Eight, its officers, contractors, subcontractors, agents, employees or other persons acting on Ward Eight's behalf ("**Indemnifying Parties**");
- b. The displacement or relocation of any person from the Property as the result of the development of the Project on the Property by the Indemnifying Parties;
- c. Any plans or designs for the Project prepared by or on behalf of Ward Eight including, without limitation, any errors or omissions with respect to said documents;
- d. Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Ward Eight, or resulting from any breach or default by Ward Eight, under this Agreement; and

Telephone: 847.448.8100

With a copy to:

City of Evanston
Attn: Corporation Counsel, W. Grant Farrar
2100 Ridge Avenue, Room 4400
Evanston, IL 60201
Telephone: 847.866.2937

To Ward Eight:

Ward Eight, LLC
629 Howard Street
Evanston, IL 60202
Attn: Anne Carlson, Manager

Any written notice, demand or communication shall be deemed received immediately if personally delivered or delivered by delivery service to the addresses above, and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

XVI. DEFAULT; REMEDIES; DISPUTE RESOLUTION

a. Notice of Default.

In the event of failure by either party hereto substantially to perform any material term or provision of this Agreement, the non-defaulting party shall have those rights and remedies provided herein, provided that such non-defaulting party has first provided to the defaulting party a written notice of default in the manner required herein identifying with specificity the nature of the alleged default and the manner in which said default may be satisfactorily be cured.

b. Cure of Default

Upon the receipt of the notice of default, the alleged defaulting party shall promptly commence to cure, correct, or remedy such default within 90 days and shall continuously and diligently prosecute such cure, correction or remedy to completion.

c. City Remedies; Repayment of Loan.

In the event of a default by Ward Eight of the terms of this Agreement that has not been cured within the timeframe set forth in Paragraph b above, the City, at its option, may terminate this Agreement or may institute legal action in law or in equity to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement. In the event of a default by Ward Eight that occurs after the City has disbursed any Grant funds, the total of such disbursement(s), plus any accrued interest, shall become immediately due and payable.

All payments shall be first credited to accrued interest, next to costs, charges, and fees which may be owing from time to time, and then to principal. All payment shall be made in lawful money of the United States. Payments shall be made to City at the address set forth in Article XI herein or at such other address as City may direct pursuant to notice delivered to Ward Eight in accordance with Article XV.

d. Ward Eight's Exclusive Remedies.

The parties acknowledge that the City would not have entered into this Agreement if it were to be liable in damages under, or with respect to, this Agreement or any of the matters referred to herein, including the Project, except as provided in this Article. Accordingly, Ward Eight shall not be entitled to damages or monetary relief for any breach of this Agreement by the City or arising out of or connected with any dispute, controversy, or issue between Ward Eight and the City regarding this Agreement or any of the matters referred to herein, the parties agreeing that declaratory and injunctive relief, mandate, and specific performance shall be Ward Eight's sole and exclusive judicial remedies.

XVII. APPLICABLE LAW

The internal laws of the State of Illinois without regard to principles of conflicts of law shall govern the interpretation and enforcement of this Agreement.

XVIII. CONFLICT OF INTEREST

- a. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested.
- b. The Ward Eight warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

XIX. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES

No member, official, agent, legal counsel or employee of the City shall be personally liable to the Ward Eight, or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Ward Eight or successor or on any obligation under the terms of this Agreement.

XX. BINDING EFFECT

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

XXI. AUTHORITY TO SIGN

The Ward Eight hereby represents that the persons executing this Agreement on behalf of Ward Eight have full authority to do so and to bind Ward Eight to perform pursuant to the terms and conditions of this Agreement.

XXII. COUNTERPARTS

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

XXIII. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

- a. This Agreement and the Exhibits and references incorporated into this Agreement express all understandings of the parties concerning the matters covered in this Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
- b. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Ward Eight, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Ward Eight.

XXIV. NON-ASSIGNMENT

The Ward Eight shall not assign the obligations under this Agreement, nor any monies due or to become due, without the City's prior written approval, and Ward Eight and Ward Eight's proposed assignee's execution of an assignment and assumption agreement in a form approved by the City. Any assignment in violation of this paragraph is grounds for breach of this Agreement, at the sole discretion of the City Manager. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

XXV. NO WAIVER

No failure of either the City or the Ward Eight to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such

covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City, and the Participant have signed this Agreement as of the dates set opposite their signatures.

THE CITY OF EVANSTON,
an Illinois home rule municipal corporation

By: Wally Bobkiewicz
Its: City Manager, Wally Bobkiewicz

WARD EIGHT LLC,
an Illinois limited liability company

By: Anne Carlson

Its: Manager, Anne Carlson
By: Cody Modeer

Its: Manager, Cody Modeer

ATTACHMENT:
Exhibit A – Legal Description of Property

Return this form to:
City of Evanston
Director Community & Economic Development
2100 Ridge Avenue
Evanston, IL 60201

Exhibit A:

LEGAL DESCRIPTION OF PROPERTY

LOT 6 AND THE EAST 0.62 FEET OF LOT 5 IN BLOCK 1 IN NILES HOWARD
TERMINAL ADDITIONAL, BEING A SUBDIVISION OF THE SOUTH 6.25 CHAINS (412
½ FEET) OF THAT PART OF THE NORTHEAST ¼ OF SECTION 30, TOWNSHIP 41
NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF
THE RIGHT OF WAY OF THE CHICAGO AND NORTH WESTERN RAILROAD IN
COOK COUNTY, ILLINOIS.

Real property address: 629-631 Howard Street, Evanston, Illinois, 60202

PIN: 11-30-209-024-0000

